MR 1815

1947.

K

File No. Co-operative II/47

Legal DEPARTMENT

B. BRANCH

Subject:—

Files and Notifications

under the Bombay Co-operative

Societies Act, 1925.

C O N T E N T S.

Legal Department File No. Co-op. II/47.

Sr. No.	Compilation No.	Subject.	Pages.
		Rules & Notifn. under the Bombay Co-operative Societies Act, 1925.	
(1)	G. No. 2286 22/3/47.	Sec. 67. — Draft Order under	1-3.
(2)	G. No. 2806 22/3/47.	——— Do ———	5-9.
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(4)	G. R. R. D. No. 2752/48. 31/3/47.	Sec. 6 (b) Provincial Industrial Co-operative Association. Exemption of ——— from.	21. (P. 21 not typed)
(5)	G. No. 6100 11/6/47.	Sec. 67. Held that modifn. in a notifn. issued under——— that the word 'person' in the defn. of the term 'member' shall include a firm is not a modifn. but an amendment. It is doubtful whether sec. 67 was intended to give power to the Provincial Govt. to effect amendments by this direct method in the main provisions of the Act. The practice of issuing such notifns. should therefore be discontinued till the Act is suitably amended.	23-24.
(6)	G. No. 4214. 25/4/47.	Sec. 67 — Notifn. under	25-27.
(7)	G.R.R.D.No. 3150/48. 28/4/47.	3, 5, 6, 6-A, 7, 8, 11, 12-A, 17, 24, 26, 27, 28, 32, 35, 37, 38(3), (5) and 41. — Delegating powers under to Asstt. Registrars, Joint Registrars, Deputy Registrars of co-op. societies.	

Radhav Bookdepot
14/5/56.
a/6.

1.	2	3	4.
(8)	G.O. No. 5031 16/5/47.	Sec. 30(2), 42(b) Whether the proposed rule requiring Societies to contribute towards the educational fund of the B'bay Provincial Co-operative Institute falls under——	31.
(9)	G.O. No. 5731 31/5/47.	Sec. 67 — Order under.	33-35.
(10)	G.O. No. 6031. 9/6/47.	Sec. 66 — Order under.	37-39.
(11)	G.O. No. 6060 10/6/47.	Rule 8. — Modification of	41.
(12)	G.N.N.D. No. 5510/45. 27/8/47.	Co-operative Societies Rules for the conduct of Govt. servants in relation to ——	43-44. (pp-43-44 not typed)
(13)	G.O. No. 11134. 21/11/47.	Clause 3(c) Whether in view of the difficulties i.e. which may be experienced if the firms are admitted as the members of a society, the above clause should be amended.	45-47.

Madhav Pookandan.
14/5/56.

MR
15/5
K.S.R.
15/5.

Draft Notification.

Revenue Department

Bombay Castle, January 1947.

N. 7006/33-I. - In exercise of the powers conferred by section 67 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), the Government of Bombay is pleased to direct that the provisions of rule 10(1) of the Bombay Co-operative Societies Rules, 1927, shall apply to the ~~xxx~~ cotton sale societies in Belgaum, Bijapur, Dharwar, Kanara, East Khandesh, West Khandesh and Nasik districts, with the modification that for the words and figures "July 31st" "June 30th" and "August 15th" occuring therein, the words and figures "November 30th", "October 31st" and December 15" shall respectively, be substituted.

2. The annual balance sheets of the said societies for the year 1946-47 shall be for the period from the 1st day of July 1946 to 31st day of October 1947.

By order of the Governor of Bombay,

Secretary to Government,

Revenue Department.

Madhav Pookedar.

14/5.

C/5.

Office of the R.L.A.

Section 67 of the Bombay Co-operative Societies Act, 1925 authorised the Government of Bombay to pass an order directing that the provisons of the said Act, shall apply to a society or class of societies with such modifications as may be specified therein. Under the proviso thereto, if the order is prejudicial to any society, the society must be given an opportunity to represent its case. In the present case, the chairman of the Co-operative Cotton Sale Society, Ltd., Hubli has requested (page 85) for alteration of dates for preparing accounts. It does not appear from his letter dated 10th December 1945 at page 85 whether he has been authorised to represent on behalf of all the sale societies in Karnatak. Similarly, no such application has been received from cotton sale societies in the districts of Khandesh and Nasik. Before the proposed draft order at p.87 directing that rule 10(1) of the Bombay Co-operative Societies Rules, 1927 shall apply to the cotton sale societies in Karnatak, East Khandesh, West Khandesh and Nasik, with the modifications regarding alteration of dates for preparing accounts, is issued, it will be necessary to consult all the societies concerned, with reference to the proviso to the said section 67 if the proposed modifications are prejudicial to the societies. As it is, it will be possible to issue the proposed order in respect of the Co-operative Cotton Sale Society, Ltd., Hubli. The Registrar, Co-operative Societies, Bombay Province, may be now asked to consider this point and then to suggest the revised draft of the order at p. 87. While forwarding his draft, he should mention the cotton sale societies with reference to the districts and not generally

as in the draft order at p.87 e.g. in Karnatak. He should also consider whether it will not be necessary to include in the draft order to be proposed by him, a paragraph on the lines of paragraph 2 of Revenue Department Notification No. 7096/33, dated 3rd December 1937 at page 9.

Sd/- D. V.V.

Remembrancer of Legal Affairs.

U. R. to R.D. No. 2786 dated the 22nd March, 1947.

Madhav Raokadam.
14/5.
c/5.

Revenue Department.

Bombay Castle, January, 47.

Bombay Co-operative Societies Act, 1925.

No. 2752-J/45 :- In exercise of the powers conferred by section 67 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), the Government of Bombay is pleased to exempt the Provincial Industrial Co-operative Association shall be exempted from the provisions of clause (b) of section 6 of the said Act.

By order of the Governor of Bombay,

sd/- J.G. Sirns,
Secretary to Government.

Madhav Nadkarni.

c/5.
14/5/56.

Revenue Department.
Bombay Castle, January, 1947.

Bombay Co-operative Societies Act, 1925.

O R D E R.

No. 3752/45. In exercise of the powers conferred by section 67 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), the Government of Bombay is pleased to exempt the Provincial Industrial Co-operative Association from the provisions of clause (b) of section 6 of the said Act.

By order of the Governor of Bombay,

Secretary to Government.

Madhav Rajkoden.

14/5/56.

c/5.

R.L.'s A'S Office.

In place of the draft order at page 10 ante a revised draft order is sent herewith.

sd/- D.V.V.

Remembrancer of Legal Affairs.

U. H. to R.D. No. 2806 dated the 22nd March 1947.

Madhav Mahadan

14/5/56.

c/5.

Revenue Department.

Bombay Castle, 1947.

Bombay co-operative Societies Act, 1925.

O R D E R.

No. 1457/30.— In exercise of the powers conferred by section 4 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), and in supersession of Government Order, Revenue Department No. 1457/30, dated the 18th October 1946, the Government of Bombay is pleased to confer on the Chief Auditor and Financial Adviser, Co-operative Department, all the powers of the Registrar under the said Act, except powers under section 64A thereof.

By order of the Governor of Bombay

Secretary to Government.

Madhav Rajaram.
14/5/56.

C/5.

Office of the R.L.A.

R.D. Note at p. 35. Para. 3 :- The draft order at page 33 delegating powers under certain rules to the various officers of the Co-operative Department, is based on the revised draft furnished with R.L.A's No. 6867, dated 10th October 1946. It is in order, as slightly amended.

2. Para. 4 :- The draft corrigendum at page 39 with reference to Government Notification, Revenue Department No. 1457/39, dated 18th October 1946 is not in order. By the said notification under section 4 of the Bombay Co-operative Societies Act, 1925, all the powers of the Registrar under the Act except those under section 64A have been delegated to the Assistant Registrar, Co-operative Finance. As the designation of the said officer has been changed to "Chief Auditor and Financial Adviser, Co-operative Department" it would be proper to make a fresh order under section 4 of the Act delegating powers to the Chief ~~Asstx~~ Auditor and Financial Adviser. The requisite draft order, in place of the proposed corrigendum at page 39, is sent herewith.

3. The draft order at page 25, is the same as the one supplied with R.L.A/c No. 6867, dated 10th October 1946 and is not affected by the revised proposals made by the Registrar at page 31. It is in order, as formally amended.

sd/- P.B/4:

Remembrancer of Legal Affairs.

U. R. to R.D. No. 3847, dated the 18th April 1947.

Madhav Ranade.
~~14/5~~ 14/5/56. c/5.

Bombay Co-operative Societies Act, 1925.

NOTIFICATION.

Revenue Department.
Bombay Castle, 1947.

No. 3150/45.- In exercise of the powers conferred by section 4 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), and in modification of Government notification in the Reconstruction Departme..., No. 522/28, dated the 6th November 1945, the Government of Bombay is pleased to confer on the Joint Registrar of Co-operative, Societies, the powers of a Registrar under section 64-A of the said Act, in respect of agricultural credit and non-credit societies and urban credit and salary earners societies.

By order of the Governor of Bombay,

Secretary to Government.

Madhav Rajbadan.

14/5.

c/5.

Bombay Co-operative Societies Act, 1925.

O R D E R.

Revenue Department,
Bombay Castle, 1947.

No. 3150/45-J. In exercise of the powers conferred by section 4 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), the Government of Bombay is pleased to confer on the officers specified in column 1 of the Schedule hereto annexed all the powers of a Registrar under the Bombay Co-operative Societies Rules, 1927, specified against them in column 2 of the said Schedule.

SCHEDULE.

Officers. (1)	Rules. (2)
1. Joint Registrar of co-operative Societies. 2. Joint Registrar for Industrial Co-operatives and Village Industries. 3. Deputy Registrars of Co-operative Societies. 4. Chief Auditor and Financial Advisor, Co-operative Department.	3, 5, 6, 6-A, 7, 8, 11, 12-A, 17, 24, 26, 27, 28, 32, 35, 37, 38(3), 38(5), and 41.
Assistant Registrars of Co-operative Societies.	32 of 35 in respect of all Societies; 3, 5, 6, 6-A, 7, 8, 11, 12-A, 17, 26, 28, 37, 38(3) and 38(5) in respect of the class of societies which the Assistant Registrars are empowered to register under section 10.

By order of the Governor of Bombay,

Secretary to Government.

Madhav Ranade,
14/5/47.

Bombay Co-operative Societies Act, 1925.

Revenue Department,
Bombay Castle, 1947.

ORDER.

No. 1457/39.- In exercise of the powers conferred by section 4 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), and in supersession of Government Order, Revenue Department, No. 1457/39, dated the 18th October 1946, the Government of Bombay is pleased to confer on the Chief Auditor and Financial Adviser, Co-operative Department, all the powers of the Registrar under the said Act, except powers under section 64-A thereof.

By order of the Governor of Bombay,

Secretary to Government.

Undhat Rastadan.
14/5.
c/5.

Office of the R.L.A.

In his opinion No.8422, dated 21st August 1939, the R.L.A. (Mr. J. R. Thuraidhar) observed as follows:-

" The term 'member' as defined in the Bombay Co-operative Societies Act, 1925 includes a person joining in the application for the registration of a society or a person admitted to membership after registration in accordance with the rules and bye-laws applicable to such society.
Section 3(35) of the Bombay General Clauses Act, 1904 provides that in all Bombay Acts made after the commencement of this Act, unless there is anything repugnant in the subject or context, the term 'person' shall include any company or association or body of individuals whether incorporated or not. A partnership firm is, however, not a 'person' but merely a collective name of the individuals who are members of the partnership (Vide Sookhyal V. Johannull 50 Cal. 549). Section 4 of the Partnership Act, 1932 does not alter the above legal position; for it defines that persons who have entered into partnership with one another are called individually 'partners and collectively a 'firm'. The provisions of the Bombay Co-operative Societies Act, 1925 show that a member of a co-operative society must be a person. A body or group of individuals cannot be such member.
It is therefore not legally feasible for a firm to be a member of a co-operative society."

Since then a practice seems to have grown up of Government issuing notifications in exercise of the powers conferred by section 67 of the Bombay co-operative Societies Act directing that the provisions of clause(c) of section 3 of the Act shall apply to a particular co-operative society with the modification that the word "person" in the definition of the term "member" shall include a firm.

2. The R.L.A.'s opinion No. 8422, dated 21st August 1939 is correct so far as it goes. The effect of that opinion which is based upon well-settled law is that a firm name is a mere expression and a legal entity. Consequently it would not be possible to include a firm in the definition of the word "persons" as used in section 3(35) of the Bombay General Clauses Act, 1904. In fact, for this reason

3(c) of the Bombay Co-operative Societies Act read with Section

Madhav Raokadam.
14/5.
9/5.

a proposal is already under consideration that the words " and a partnership firm" should be added after the word "person" occurring in section 3(c). I have grave doubts whether, without any such amendment, it is feasible to achieve the same result under cover of section 67 of the Act as we have so far been doing. Section 67 authorises Government by general of special order to be published in the Official Gazette to exempt any society or class of societies from any of the provisions of the Act or to direct that such provisions shall apply to any such society or class of societies with such modifications as may be specified in the order. To add the category of firms to the word "person" as used in section 3(c) cannot be said to be a modification of that provision. In effect we are expanding the scope of the definition of the word "member" by including therein a new dategory as the proposed amendment makes it abundantly clear. This, in my opinion, is amending the Act and not modifying its provisions. I doubt whether section 67 was intended to give power to the Provincial Government to effect amendments by this indirect method in the main provisions of the Act. In my opinion, therefore, the practice of issuing such notifications should be discontinued, and cases of this kind may kept pending until the proposed amendment is carried out in the Act. H. M. (Law) to whom this opinion was shown also agrees with the new taken therein.

sd/- P.M.L.

Remembrancer of Legal Affairs.

U. R. to R. D. No. 6109 dated the 11tth June 1947.

MadhavRaokadam.
14/5/56.

Office of the R.L.A.

In place of the proposed draft order at p. 35, a revised draft thereof is sent herewith.

If clause (b) of section 37 of the Bombay Co-operative Societies Act, 1925, is read with section 20 of the Indian Trusts Act, 1882, it appears that a society can invest its funds in stocks or debentures of, or shares in, Railway or other companies the interest thereon is guaranteed by the Secretary of State for India in Council or by the Central ~~Government~~ Government. It is not, therefore, necessary to refer to these shares in the draft order. Presumably the Society is not to invest its funds in stocks and debentures of a Railway owned and managed by an Indian Ruling Prince. However, if ~~if~~ it is ~~not~~ necessary to permit the society to invest its funds in shares of other Railway Companies, the revised draft order provides accordingly.

sd/- P.H.L.
25/4.

Remembrancer of Legal Affairs.

U. R. to R.D. No. 4214 dated the 25th April 047.

Bombay Secretariat.
14/5/56.

c/5.

Bombay Co-operative Societies Act, 1925.

Order.

Revenue Department,
Bombay Castle, 1947.

No. 3422/45 :- In exercise of the powers conferred by section 67 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925) the Government of Bombay is pleased to direct that the provisions of section 37 of the said Act shall apply to the Bombay Postal Employees' Co-operative Insurance Fund, Ltd., Bombay, with the modification that, subject to the provisions of sub-section (1) of section 37 of the Insurance Act, 1938, (IV of 1938) the said Society may also invest its funds in any of the xxx shares or securities specified below, namely :-

(1) Stocks or debentures of, or shares in Railway companies other than those referred to in clause (c) of sec. 20 of the Indian Trust Act, 1882 (II of 1882).

(2) Debentures and/or preference shares of any or all of the companies specified below:-

Ahmedabad Electric Company, Limited.

Bombay Electrical Supply & Tramways Co. Ltd.

Bombay Suburban Electric Supply Co. Ltd.

Andhra Valley Power Supply Co. Ltd.

Karachi Electric Supply Corporation, Ltd.

Poona Electric Supply Company, Limited.

Surat Electric Company, Limited.

Tata Power Company, Limited.

Tata Hydro-Electric Power Supply Co. Ltd.

By order of the Governor of Bombay,

Secretary to Government.

Madhavrao Raokadam. c/5. 14/5/56.

Office of the R.L.A.

The rule/making power is given under section 71 of the Bombay Co-operative Societies Act, 1925. Sub-section (2) of that section prescribes the various matters in respect of which rules can be made by Government. The proposed rule requiring ~~xxxxxxxx~~ Societies to contribute towards the educational fund of the Bombay Provincial Co-operative Institute does not fall under any of the matters specified in sub/section (2). Sub/section (1) no doubt authorises the Provincial Government to make rules to carry out the purposes of the Act. The purpose of the educational fund of the Bombay Provincial Co-operative Institute would be ~~xxxxxx~~ covered by the purposes which section 39(2) and section 42(b) have in view. But these sections make it dis/-cretionary for the Societies to contribute money to such purposes whereas the proposed rule makes the contribution obligatory upon them. In so far as it makes the contribution compulsory, which by the section itself is made optional, the rule would be repugnant to the principal enactment and to that extent invalid.

2. The better method of achieving the purpose is to make suitable amendments in section 39(2) or section ~~xxx~~ 42 (b).

sd/- P.M.L.
16/5/36.

Remembrancer of Legal Affairs.

U. R. to R.D. No. 5031, dated the 16th May 1947.

Bombay Secretariat.
14/5/36.

sd/-

Office of the R.L.A.

In place of the draft order at page 3 ante, a revised draft order is sent herewith.

sd/- P.N.L.

Remembrancer of Legal Affairs.

U. R. to R. D. No. 5731, dated the 31st May 1947.

Railway Secretariat.
- 14/5/56.

c/5.

Revenue Department.

Bombay Co-operative Societies Act, 1925.

Bombay Castle, 1947.

No. 4605/45.- In exercise of the powers conferred by section 67 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), the Government of Bombay is pleased to exempt the Bombay Muslim Co-operative Bank Limited, from the provisions of rule 6(2) of the Bombay Co-operative Societies Rules 1927, prescribing the time limit for forwarding to the Registrar a copy of the resolution passed at the annual general meeting of the said Bank held on the 29th September 1946 recommending the adoption of certain amendments to its by-laws.

By order of the Governor of Bombay,

Secretary to Government.

Madhav Ranade.

M/S.

C/S.

Office of the R.L.A.

In place of the draft Order at p. 191, a revised draft thereof is sent herewith. Exception from the requirements of section 9 of the Tachay Co-operative Societies Act, 1925, as regards the number of persons required to sign the application will also have to be given. This has been provided in the revised draft. R. D. should verify whether the revised draft carries out their intention.

sd/- P.M.L. 9/6

Secretariat of Legal Affairs.

U. R. to R. D.. No. 6032, dated the 9th June 1947.

Tachay Khokhan.

~~Title~~ 11/5/56.

c/s.

Revenue Department,

Bombay Castle, June 1947.

Bombay Co-operative Societies Act, 1925.

O R D E R.

No. - In exercise of the powers conferred by section 66 of the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), the Government of Bombay is pleased to exempt the Co-operative Workshop at Karad, District Satara from the requirements of sections 7 and 9 of the said Act, in so far as they relate to the number of persons applying for registration, on condition that such number shall not be less than four.

By order of the Governor of Bombay

Secretary to Government

Vedhav Enclosure.

14/3/56.

C/5.

Office of the R.I.A.

It is proposed to modify rule 8 of the Bombay Co-operative Societies Rules, 1927, in order to enable the Provincial Industrial Co-operative Association, Ltd, Bombay, to incur liabilities in excess of the exceeding 20 times its paid up share capital etc* limit permissible under the said rule 8 but not excess of the permissible limit under rule 8 is incurred on pledge of goods only. The term "goods" is not defined either in the Bombay Co-operative Societies Act, 1925, or the rule made thereunder. It will therefore have the ordinary dictionary meaning viz. moveable property, merchandise, wares things for transmission by rail etc. Before therefore the draft Order is vetted, R.D. is requested to state whether it is intended to give the term 'goods' the above meaning or the meaning given to it in the Sale of Goods Act, 1930, (see also Indian Railways Act 1890), or any other meaning.

* on the Condition the liability in

sd/- A. N. Khan.

for Remembrancer of Legal Affairs.

C. R. to R. D. No. 6010 dated the 10th June 1947.

Bodhav Bookcdam.
14/5/56.

c/5.

Office of the H.L.A.

I have discussed this case with H.M. (L) and H. M.(F.D.)

2. H. M. (L) and H.M. (F.D.) are both agreed that it is better to amend rule 8 rather than have recourse to section 67. The papers are now returned to the Revenue Department for suggesting a draft ~~amendment~~ amendment of the rule.

3. As regards the question whether "person" includes a ~~firm~~ firm, the consensus of judicial opinion in India and England seems to be that it does not. In this connection it must be observed that the definition of "person" given in the General Clauses Act is subject to the definition of "firm" as given in the Indian Partnership Act, 1932, which is as follows:-

Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm".

It has always been understood in partnership law that a firm has no legal recognition as a firm. The following passage from Lindley on Partnership - than which no better authority on partnership law is available - makes this position clear :

"But this is not the legal notion of ~~a~~ a firm. The firm is not recognised by English lawyers as distint from the members composing it. In taking partnership accounts and in administering partners, in the name of their firm; but speaking generally, the firm as such has no legal recognition. The law, ignoring the firm looks to the partners composing it; any change amongst them destroys the identity of the firm; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and their liabilities. In point of law, a partner may be the debtor or the creditor of his co-partners, but he cannot be either debtor or creditor of the firm of which he is himself a member, nor can he be employed by his firm, for a man cannot be his own employer.

A member of an ordinary partnership fills a double character; he is both a principal and

the actions may now, speaking generally, be brought by or against partners.

Madhav Rao Kadam.
15/5. c/5.

an agent. As a principle he is bound by what he does himself and by that his ~~~~ co-partners do on behalf of the firm, provided they keep within the limits of the authority as an agent he binds them by what he does for the firm, provided he keeps within the limits of his authority. But a partner is not the surety of the firm; nor when he receives moneys belonging to the partnership can he receive it in a fiduciary capacity. Every member of an ordinary partnership, however numerous the partners may be, is liable as a principal to have his private property seized for a partnership debt, whether the firm has assets to pay it or not; and until the law was altered in this respect by the Partnership Act, 1890, the property of the firm was liable to be seized for the private debts of any of the persons composing it. This non-recognition of the firm, in the mercantile sense of the word, is one of the most marked differences between partnerships and incorporated companies."

These principles apply to Indian law as well. Seem the discussion at p. 16 of Pollock & Mulla (again our highest authorities) on Indian Partnership Act, 1932. In Kishabir Prasad V. Chittu Lal, I.L.R. 54 All. 646, Sulaiman C. J. considered the General Clauses Act and recorded the opinion that the point was not free from difficulty. The definition of "partnership" and "firm" as given in the Indian Partnership Act makes the position identical with English law; and in my opinion there is no scope for ~~~~ experiencing any difficulty. It is because of this position that the ~~~~ English Partnership Act, 1890, provided expressly in section 4(2) that "in Scotland a firm is a legal person distinct from the partners of whom it is composed".

4. It is for these reasons that I endorsed the opinion given by Mr. Dwarendhar.

5. The passage from Lindley quoted above incidentally throws light on the difficulties we may experience if we admit firms as ~~~~ members of a society. It is a matter for Government's decision whether in view of these difficulties we should amend clause(c) of section 3 to include a ~~ firm.

P.T.O.

There isnow general agreement that such inclusion.

(on p. 47)

Madhav Rao[illegible].

14/5/56.

c/5.

cannot be made by having recourse to section 67.)

s/- P.N.L.
21/11

Remembrancer of Legal Affairs.

U. O. to O. D. No., 11134, dated the 21st November 1947.

Madhav Prabhudesai.

14/5/50.)

c/5.